

Message Text

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TO AMEMBASSY MADRID IMMEDIATE

INFO AMEMBASSY CARACAS IMMEDIATE

S E C R E T STATE 176311

EXDIS

E.O.11652: XGDS (1'

TAGS: PLOS

SUBJECT: LOS: HIGH LEVEL DEMARCHE TO GOS ON STRAITS ISSUE

FOR AMBASSADOR

CARACAS FOR LOS DEL

1. BY SEPARATE TELEGRAM, DEPARTMENT IS TRANSMITTING TO YOU FOR DELIVERY LETTER FROM THE SECRETARY TO FONMIN CORTINA REGARDING SPANISH OPPOSITION AT THE LOS CONFERENCE IN CARACAS TO ACHIEVEMENT OF VITAL US OBJECTIVE OF UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION.

2. LETTER FROM SECRETARY IS INTENDED TO BRING ABOUT GOS RECONSIDERATION OF ITS POSITION ON STRAITS AT LOS
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CONFERENCE. LETTER IS ALSO DESIGNED TO BE REINFORCED

BY HIGH LEVEL DEMARCHES SETTING FORTH IN STRONG TERMS SUBSTANCE OF US POSITION ON THIS QUESTION AND ITS IMPORTANCE TO US-SPANISH RELATIONS. IN DELIVERING LETTER TO CORTINA, THEREFORE, YOU SHOULD TAKE THAT OCCASION TO MAKE POINTS SET FORTH IN PARA 7 BELOW. SIMILAR APPROACH CONTEMPLATED IN WASHINGTON.

3. FYI: FOLLOWING 4 PARAGRAPHS SET FORTH BACKGROUND TO REQUESTED DEMARCHE CONTAINED IN PARAGRAPH 7 BELOW.

US LOS DELEGATION IN CARACAS BELIEVES IT IS URGENT THAT WE IMPRESS UPON GOS AT HIGHEST LEVELS THAT US OBJECTIVE OF RIGHT OF UNIMPEDED TRANSIT THROUGH, OVER AND UNDER STRAITS USED FOR INTERNATIONAL NAVIGATION IS OF THE UTMOST IMPORTANCE TO US SECURITY AND OTHER INTERESTS. DEPARTMENT CONCURS. IN FACT, WE CANNOT ENVISAGE AGREEMENT ON AN LOS TREATY WHICH DOES NOT INCLUDE SUCH A RIGHT. SPAIN HAS BEEN AN ACTIVE OPPONENT OF OUR STRAITS POSITION AND HAS CONDUCTED A DAMAGING CAMPAIGN AGAINST IT, INCLUDING ATTACKS ON THE MOTIVES OF THE "SUPERPOWERS" IN THE NEGOTIATIONS AND DIRECT LOBBYING IN FOREIGN CAPITALS. SPANISH ACTIVITY IN THIS REGARD HAS, IF ANYTHING, INTENSIFIED IN THE CURRENT SESSION OF THE CONFERENCE IN SPITE OF THE RECENT US-SPANISH SIGNATURE OF JOINT DECLARATION OF PRINCIPLES WHICH, INTER ALIA, STRESSED OUR COMMON SECURITY INTERESTS. CONTINUED SPANISH ATTEMPTS TO UNDERMINE OUR POSITION ON STRAITS IN LIGHT OF THE JOINT DECLARATION COULD WELL BE INTERPRETED AT THE LOS CONFERENCE AS AN INDICATION THAT US INTEREST IN ACHIEVEMENT OF ITS STRAITS OBJECTIVES HAS DIMINISHED. SPANISH REPRESENTATIVES IN CARACAS HAVE INDICATED LITTLE, IF ANY, GIVE IN THE GOS POSITION AND OUR DELEGATION BELIEVES THAT ONLY HIGHER LEVEL APPROACHES CAN AFFECT THEIR ATTITUDE.

4. SPAIN'S ATTITUDE ON STRAITS, OF COURSE, DERIVES FROM ITS CONCERNS OVER THE STRAIT OF GIBRALTAR. THE STRAIT IS 7.7 NAUTICAL MILES WIDE AT ITS NARROWEST POINT, WITH SPANISH TERRITORY ON BOTH SIDES. SPAIN CURRENTLY CLAIMS A TERRITORIAL SEA OF 6 MILES. IT ARGUES THAT THE

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STRAIT OF GIBRALTAR THEREFORE IS OVERLAPPED BY SPANISH TERRITORIAL WATERS IN WHICH TRANSIT OF VESSELS IS SUBJECT TO INNOCENT PASSAGE. (IN FACT, ANY LIMIT WIDER THAN 3 MILES WOULD OVERLAP THE STRAIT WITH SPANISH TERRITORIAL WATERS).

5. AT LOS CONFERENCE SPAIN ADVOCATES THE REGIME OF "INNOCENT PASSAGE" IN STRAITS OVERLAPPED BY TERRITORIAL

SEAS, POSSIBLY "REDEFINED" INNOCENT PASSAGE. INNOCENT PASSAGE HOWEVER DOES NOT INCLUDE OVERFLIGHT OR SUBMERGED TRANSIT, AND HAS BEEN SUBJECTIVELY INTERPRETED BY SOME STATES. SPAIN HAS PUBLICLY QUESTIONED WHETHER PASSAGE OF SHIPS CARRYING "HAZARDOUS CARGOES" (E.G., NUCLEAR WEAPONS, OIL, OR LNG) IS "INNOCENT." GOS ALSO PRIVATELY QUESTIONED US OVERFLIGHT OF THE STRAIT OF GIBRALTAR DURING THE OCTOBER WAR. SPAIN WOULD PRESUMABLY ARGUE THAT CURRENT US TRANSITS ARE EITHER INNOCENT PASSAGE OR HAVE BEEN CONSENTED TO UNDER US-SPANISH BASE-RIGHTS AGREEMENTS.

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6. WE ARE PREPARED TO AGREE TO A 12-MILE TERRITORIAL SEA PROVIDED ALL VESSELS AND AIRCRAFT (INCLUDING SUBMERGED SUBMARINES) HAVE AN UNAMBIGUOUS RIGHT OF UNIMPEDED PASSAGE FOR THE PURPOSE OF TRANSITING STRAITS USED FOR INTERNATIONAL NAVIGATION. THIS RIGHT CANNOT BE SUBJECT TO NOTIFICATION OR TO UNILATERAL INTERPRETATION OR REGULATIONS BY THE STRAITS STATE, ALTHOUGH WE ARE PREPARED TO ADHERE TO INTERNATIONAL SAFETY AND POLLUTION REGULATIONS. AS US NOW RECOGNIZES ONLY A 3-MILE TERRITORIAL SEA, WE BELIEVE THERE ARE NOW HIGH SEAS RUNNING THROUGH GIBRALTAR IN WHICH WE ENJOY COMPLETE FREEDOM OF NAVIGATION AND OVERFLIGHT. WE OVERFLY THE STRAIT AND TRANSIT IT SUBMERGED WITHOUT CONSENT, AND HAVE CONSISTENTLY REFUSED TO AGREE THAT WE HAVE THESE RIGHTS BY VIRTUE OF IMPLIED SPANISH CONSENT IN THE BASE-RIGHTS AGREEMENT OR OTHERWISE. THE US POSITION IS CLOSELY COORDINATED WITH AND SUPPORTED BY THE UK, FRANCE, AND THE USSR. BILATERAL AGREEMENTS IN STRAITS WOULD NOT BE NEGOTIABLE OR SECURE OVER THE LONG TERM IN ALL THE STRAITS IN WHICH WE HAVE AN INTEREST, AND A BILATERAL SETTLEMENT WITH SPAIN WOULD HAVE GRAVE EFFECTS

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ON US-SOVIET COOPERATION, AND ON OUR NATO ALLIES. END
FYI.

7. WITH THIS BACKGROUND IN MIND, YOU SHOULD MAKE
FOLLOWING POINTS TO CORTINA:

A. A WIDELY ACCEPTED LAW OF THE SEA TREATY IS IN THE INTEREST OF ALL NATIONS AND PROGRESS OF THE LAW OF THE SEA CONFERENCE IN CARACAS IS BEING WATCHED CLOSELY. SUCCESSFUL RESOLUTION OF THE STRAITS ISSUE IS A KEY TO ANY TREATY THE US AND OTHER MARITIME NATIONS COULD ACCEPT.

B. THE US HAS BASIC SECURITY INTERESTS IN A GUARANTEED RIGHT OF UNIMPEDED TRANSIT OF STRAITS FOR VESSELS,

AIRCRAFT, AND SUBMERGED SUBMARINES, AS ITS MOBILITY IS
ESSENTIAL TO THE MAINTENANCE OF ITS TIES WITH ITS
FRIENDS.

C. WE CANNOT SUBJECT THIS MOBILITY TO FOREIGN CONTROL
OR INTERFERENCE, NOR DO WE BELIEVE STATES BORDERING
STRAITS WOULD BENEFIT FROM THE INEVITABLE DOMESTIC
AND INTERNATIONAL PRESSURES THAT WOULD ACCOMPANY A
RIGHT OF CONTROL. INSTABILITY WOULD RESULT IN THE
REGION SURROUNDING MANY OF THE WORLD'S MAJOR STRAITS.

D. WE ARE PREPARED TO WORK WITH SPAIN TO ASSURE
SAFETY OF TRAFFIC AND PREVENTION OF POLLUTION. ACTIVE

SPANISH OPPOSITION TO OUR STRAITS OBJECTIVES HOWEVER IS
NOT COMPATIBLE WITH THE TYPE OF RELATIONSHIP WE WOULD
LIKE TO HAVE WITH SPAIN, AND WHICH WAS SET FORTH IN
THE JOINT DECLARATION OF PRINCIPLES RECENTLY SIGNED
BY OUR TWO GOVERNMENTS.

E. IF CORTINA RAISES QUESTION OF SOVIET TRANSIT OF
GIBRALTAR, YOU SHOULD REPLY THAT TO FULLY PROTECT OUR
INTERESTS IN THE MORE THAN 100 STRAITS USED FOR
INTERNATIONAL NAVIGATION WHICH WOULD BE OVERLAPPED BY A
TERRITORIAL SEA OF 12 MILES, GUARANTEES OF UNIMPEDED
PASSAGE MUST BE PART OF A MULTILATERAL SOLUTION AND
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AS SUCH WOULD OF NECESSITY APPLY TO ALL NATIONS. WE
DO NOT BELIEVE IT IS WISE FOR EITHER OF US, BY IMPLYING
RESTRICTIONS ON TRANSIT, TO ENCOURAGE THE SOVIET UNION
TO CONCLUDE THAT IT MUST INCREASE ITS POLITICAL INFLUENCE
IN THE AREA IN ORDER TO PROTECT ITS PEACETIME ACCESS
TO THE ATLANTIC OCEAN. KISSINGER

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